Supreme Court, U. S.
FILED
AUG 30 1978
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1655

CHARLES BEN HOWELL,

Petitioner,

v.

CARL THOMAS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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To the Honorable Judges
of the Supreme Court of the United States:

This Brief in Opposition to the Petition for Certiorari is respectfully submitted on behalf of the respondent Carl Thomas, Sheriff of Dallas County, Texas.

OPINION BELOW

This case was affirmed by the United States

Court of Appeals for the Fifth Circuit and its opinion is now reported: *Howell v. Thomas*, 566 F.2d 470 (1978).

STATEMENT OF THE CASE

As noted in the petition, Charles Ben Howell was convicted of contempt of a Texas Court and sentenced to a short jail term and fine. See *Ex parte Howell*, 448 S.W.2d 123, appeal dismissed *sub. nom. Howell v. Jones*, 414 U.S. 803, reh. den. 414 U.S. 1052 (1973). Howell then sought habeas corpus relief in the Federal Courts without success. *Howell v. Jones*, 516 F.2d 53, cert. den. 424 U.S. 916, reh. den. 425 U.S. 945 (1976).

Howell was then sued by the State Bar of Texas in a disbarment suit which sought to discipline him for the actions which had formed the basis of his contempt conviction. In keeping with the Texas practice, the case was submitted to the jury on special issues. The jury found that Howell did, in fact, fail to answer a question after being instructed by the trial judge to answer (Special Issue No. 9), but the jury further found that such conduct was not prejudicial to the administration of justice (Special Issue No. 10). The trial court disregarded the jury's answer to Special Issue No. 10 because it was a question of law and not a question of fact for the jury, and entered a judgment finding that Howell did engage in conduct which was prejudicial to the administration of justice and imposing a reprimand

for such professional misconduct. The judgment, which includes the answers to Special Issues 9 and 10 by the jury, is set out at pages 3 through 8 of the appendix to the petition herein.

Howell then brought the instant habeas corpus action in the District Court. That Court entered judgment denying relief, the Fifth Circuit affirmed, and Howell now petitions for certiorari.

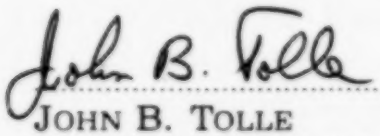
ARGUMENT

Petitioner asserts that three questions are presented for review. His Question Three attempts to bring into question again the validity of the contempt conviction. (Petition, P. 3). We respectfully submit that the final judgments rendered against petitioner in that case bar further litigation over the validity of that conviction.

Questions One and Two present petitioner's main contention, namely that the jury finding that his conduct did not prejudice the administration of justice collaterally estops the execution of the sentence for his contempt conviction. But the jury finding was a nullity, inasmuch as it was disregarded by the trial court and that court's judgment was upheld by the state appellate courts. The judgment of the state court in the disbarment suit held that petitioner's conduct was prejudicial to the administration of justice. There is simply nothing in the state court's judgment which could arguably give rise to collateral estoppel in the contempt case.

WHEREFORE, respondent prays that the writ of certiorari be denied.

HENRY WADE
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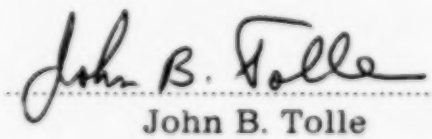


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CERTIFICATE OF SERVICE

I, John B. Tolle, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served copies of the foregoing Brief in Opposition to Petition for Certiorari on counsel for petitioner at their addresses of record on this 23rd day of August, 1978.



John B. Tolle